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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

BRIAN JAMES,

Plaintiff and Appellant,

v.

ASSETS RECOVERY CENTER
INVESTMENTS, LLC,

Defendant and Respondent.

B255519

(Los Angeles County
Super. Ct. No. BC450738)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Steven J. Kleifield, Judge. Affirmed.

Law Offices of Levi Reuben Uku and Levi Reuben Uku for Plaintiff and
Appellant.

The Wolf Firm and Abe G. Salen for Defendant and Respondent.

Plaintiff and appellant Brian James (James) challenges a trial court judgment of dismissal following an order granting the motion for summary judgment of Assets Recovery Center Investments, LLC (ARCI). Because we find no triable issue of material fact, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Factual Background

On October 12, 2007, James borrowed \$376,000 under a promissory note secured by a deed of trust on real property located at 3500 W. Manchester Boulevard, Unit 466 (the subject property). The lender was EOFS Mortgage Services (EOFS) and the beneficiary was Mortgage Electronic Registration Systems, Inc. (MERS). The deed of trust was recorded on October 22, 2007.

On May 29, 2008, MERS assigned the deed of trust to Equity One, Inc., and Equity One, Inc., thereafter substituted Cal-Western Reconveyance Corporation (Cal-Western) as trustee under the deed of trust. On August 1, 2008, Equity One, Inc., assigned the deed of trust to EOFS, and on April 27, 2009, EOFS assigned the deed of trust to ARCI.

Meanwhile, in July 2008, James was offered a loan modification agreement with Equity One, Inc., including a loan reduction of more than \$75,000. On September 1, 2008, he executed that loan modification agreement, including a release of all claims James had or may have had against Equity One, Inc.

By February 2009, James had stopped making payments. On July 6, 2010, Cal-Western recorded a notice of default. James failed to cure the default, so on October 12, 2010, a notice of sale was recorded. On February 22, 2011, the trial court granted a request for a preliminary injunction, enjoining the foreclosure sale.

First Amended Complaint

According to the parties' briefs, this lawsuit was initiated on December 10, 2010. James filed a first amended complaint on November 16, 2011, alleging claims of fraud, violation of the Truth in Lending Act (TILA), unfair business practices (Bus. & Prof.

Code, § 17200), promissory estoppel, declaratory relief, and unjust enrichment against ARCI.

ARCI's Motion for Summary Judgment

ARCI moved for summary judgment, arguing as follows: (1) James was not entitled to rescind the loan without first tendering the consideration he received under the contract, regardless of his mental capacity. (2) James did not rebut the presumption that all persons have the capacity to make decisions; because he has not overcome that presumption (Prob. Code, § 810), ARCI should be allowed to proceed with foreclosure. (3) James cannot state a claim for fraud against ARCI. (4) James's claim for violation of the TILA is barred by the statute of limitations. (5) James failed to demonstrate a triable issue of fact on all causes of action alleged in the first amended complaint.

James opposed ARCI's motion, arguing, inter alia, that James lacked the mental capacity to execute the loan and deed of trust, that the statute of limitations was equitably tolled, and that James was not required to tender because the subject property had yet to be foreclosed.

On March 19, 2014, the trial court granted ARCI's motion for summary judgment. Regarding the fraud claim, the trial court found that there was no evidence that ARCI made any representations to James; it was not the original lender. And there is no legal authority to support his proposition that ARCI was required to investigate loans before acquiring an assignment of a loan. Moreover, James voluntarily released and discharged EOFS and ARCI of any claims for fraud when he executed the loan modification agreement and release.

The trial court also found James's claims time-barred.

Furthermore, the trial court found that James could not prove that ARCI was anything other than a bona fide encumbrancer. Because the thrust of James's claims was that the original deed of trust and loan modification were voidable, they could be relied upon by ARCI; it follows that ARCI has superior title to James.

Finally, citing *Beach v. Ocwen Fed. Bank* (1998) 523 U.S. 410, 412 and *Pacific Shore Funding v. Lozo* (2006) 138 Cal.App.4th 1342, 1355, the trial court determined

that James's second cause of action for rescission arising out of an alleged violation of the TILA was time-barred. And, equitable tolling does not apply to a claim for rescission.

The remaining causes of action fell along with these primary claims.

Appeal

This timely appeal ensued.

DISCUSSION

I. Standard of review

Like the trial court, "[w]e first identify the issues framed by the pleadings, since it is these allegations to which the motion must respond. Secondly, we determine whether the moving party has established facts which negate the opponents' claim and justify a judgment in the movant's favor. Finally, if the summary judgment motion prima facie justifies a judgment, we determine whether the opposition demonstrates the existence of a triable, material factual issue. [Citation.]" (*Torres v. Reardon* (1992) 3 Cal.App.4th 831, 836.) "A trial court properly grants summary judgment where no triable issue of material fact exists and the moving party is entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c).) We review the trial court's decision de novo." (*Merrill v. Navegar, Inc.* (2001) 26 Cal.4th 465, 476.)

II. The trial court properly granted ARCI's motion for summary judgment

As set forth in the fraud cause of action, James's theory is that the original lender made false representations to James to induce him to enter into the promissory note and deed of trust. According to James, had he known the truth, he never would have executed the loan documents.

Under these circumstances, the original deed of trust was voidable, not void. (*Village Northridge Homeowners Assn. v. State Farm Fire & Casualty Co.* (2010) 50 Cal.4th 913, 921 [in the usual case of fraud, where the promisor knows what he is signing, but his consent is induced by fraud, mutual assent is present and a contract is formed, which, by reason of the fraud, is voidable]; *Schiavon v. Arnaudo Brothers* (2000)

84 Cal.App.4th 374, 378 (*Schiavon*) [a voidable deed is one where the grantor is aware of what he is signing, but has been induced to do so through fraudulent misrepresentations].)

Since the deed of trust here was voidable, if it is undisputed that ARCI was a bona fide encumbrancer, then ARCI would hold superior title to James. (*Schiavon, supra*, 84 Cal.App.4th at p. 378 [if a reconveyance was voidable, it could be relied upon by a subsequent purchaser for value].) And that is exactly what the evidence established. At no time was ARCI on notice of James's mental disability or otherwise aware that James's signature on the deed of trust was fraudulently obtained by the original lender. It follows that ARCI was a bona fide encumbrancer entitled to enforce its good title over James, an allegedly defrauded grantor. (*Schiavon, supra*, at p. 380.)

In urging us to reverse, James raises several arguments. First, he claims that under the TILA and the Homeowners Equity Protection Act, he is entitled to the protections against an otherwise bona fide encumbrancer for failure to investigate his financial capabilities. According to James, because ARCI failed to investigate his financial capabilities, it is not a bona fide encumbrancer. The problem for James is that he filed his lawsuit too late—it was filed in December 2010, more than three years after the date of the consummation of the loan (October 12, 2007). (15 U.S.C. § 1635(f) [setting forth the three-year statute of limitations].)

James claims that, in light of his mental capacity, the statute of limitations was equitably tolled. But, he offers no legal authority for the proposition that the statute of limitations is equitably tolled for rescission claims; at best, the statute of limitations is tolled for claims for civil damages. (See *King v. State of California* (9th Cir. 1986) 784 F.2d 910, 914–915 [“Congress placed a three year absolute limit on rescission actions, demonstrating its willingness to put a limit on some types of TILA actions. . . . Congress did not intend to prolong the limitations period”].)

To the extent James may claim that he is seeking civil damages (as opposed to rescission), the doctrine of equitable tolling might have applied. But, he cannot pursue these damages pursuant to the terms of the loan modification. As the trial court expressly found, “[a]s consideration for having his loan modified, [James] released EOFS and its

assigns, ARCI, from all actions, causes of action, claims and demands, in law and in equity that [James] may have relating to the original note and security instrument.” And, James’s claim that he lacked the mental capacity to execute the loan modification does not require reversal. As set forth above, James’s right to void the loan agreement is limited to non-bona fide encumbrancers. (*Schiavon, supra*, 84 Cal.App.4th at p. 380.)

All remaining arguments, including whether James had a duty to tender, are moot.

DISPOSITION

The judgment is affirmed. ARCI is entitled to costs on appeal.

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_____, Acting P. J.
ASHMANN-GERST

We concur:

_____, J.
CHAVEZ

_____, J.
HOFFSTADT